

EXECUTIVE SUMMARY

Intellectual property (IP) protections are essential to British creative and innovative sectors. Through the EU, the UK has unrestricted access to its biggest market for IP-intensive exports, influence over international standards as part of a major trade bloc, and certainty in its legal relations with other states. Brexit puts these benefits at risk and limits the UK's ability to diverge from EU standards. This brief proposes policy options to mitigate these risks, considering four models of UK-EU cooperation.

Brexit: Mitigating Uncertainty in Intellectual Property Law and Policy

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Intellectual property rights (IPRs) protect three main knowledge assets: copyright for creative works like software and movies, patents for inventions like pharmaceuticals, and trademarks for brands and logos. Respect for IPRs is also fundamental to the international trade system. Ratifying the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS) is a condition for World Trade Organization (WTO) membership. The UK exports assets protected by IP, with its software, music publishing and pharmaceutical sectors being particularly important.

2011-2013 (UK)	of GDP	of employment
Generated by patent-intensive industries	13%	8%
Generated by trademark-intensive industries	38%	22%
2014 (UK)	Investment in IP-related assets was £70bn	more than the overall investment in tangible assets.

The success of UK's IP-intensive sectors has been amplified through EU membership. The current Brexit terms, including withdrawal from the Single Market and Customs Union, threaten three benefits these sectors have.

1) Single Market Access

The key benefit of EU membership for the UK's IP-intensive sectors is the unrestricted access to the Single Market, with free movement of goods, services and people. This allows for:



Musicians to perform in the EU without costly and complicated procedures for visas and work permits;



Pharmaceuticals approved and produced in the UK to be sold in EU states without added regulatory requirements, customs duties or tariffs;



UK-based companies to apply for EU-wide trademark protection with only one application.

Brexit jeopardises this market access.

- The UK will no longer be part of the Digital Single Market Strategy, which makes it easier to access digital media across borders (i.e. streaming videos throughout the EU);
- Licensing copyright-protected content will be more complicated and costly for media producers and content service providers, affecting the UK's film and music industries;
- Software and patent-protected innovations may incur additional costs to be exported to the EU;
- Companies will need to register their trademarks in the UK and EU to ensure EU-wide protection, increasing cost and paperwork.

Exports of UK patent, trademark and copyright services



Exports to EU countries and IS, NO, LI, CH

2) Trade Influence

The EU has successfully negotiated trade agreements that achieve its IP interests due to its economic power and the desire of third countries to access its market. Thanks to its IP enforcement strategy, the EU has ensured that Canada protected certain names in its domestic law (i.e. 'Feta Cheese') and has encouraged China to respect its IPRs through non-legally binding measures.

After Brexit, the UK will not be involved in trade agreements between the EU and third countries and will have to renegotiate IP protection terms with those countries. Yet, the UK's ability to form new agreements with high IPR protection levels may be hindered because the UK is a much smaller economic power in trade terms, and has less trade expertise than the EU.

3) Legal Certainty in IPRs

By leaving the Customs Union and negotiating its own trade deals, the UK may only be able to offer limited IP terms. Under the current withdrawal agreement and Article 50, the UK must protect certain existing EU IPRs. This prevents regulatory divergence from EU standards, limiting any flexibility the UK may have under WTO and TRIPS rules.

Furthermore, UK industries are unsure whether the UK will (i) keep the body of EU IP law (excluding what is covered under the withdrawal agreement), (ii) be part of the Unified Patent Court, and (iii) retain any access to data generated by Europol and the EU IPO. Europol provides some access to non-EU states, but no such provisions exist for the EU IPO.

	EU Membership	EEA Membership	Swiss-style Bilaterals	Canada-style FTA	WTO Rules
Single Market Access	✓	✓	?	✗	✗
Trade Influence	✓	?	✗	✗	✗
Legal Certainty	✓	?	?	?	✗
Trade Flexibility	✗	✗	✗	✗	?

Mitigating these Risks

The UK has four models of UK-EU cooperation that could mitigate these risks.

- **EU Membership:** the ‘gold standard’, but the least feasible politically. It ensures Single Market access, continued trade influence as part of a major trade bloc, and legal certainty in IPRs.
- **EEA Membership:** the UK maintains Single Market access, participates in the Digital Single Market (DSM) and exports its patent-protected inventions with minimal barriers and no increased costs. Yet, the UK is not part of the EU’s trade agreements, loses influence over international IP standards and needs to register IP rights in the UK and EU. There is uncertainty over aspects of IP law not covered in the EEA Agreement and limited flexibility to negotiate standards divergent from the EU.
- **Swiss-style Bilaterals:** the UK negotiates access for IP sectors on an agreement-by-agreement basis, potentially with continued access to EU markets and DSM membership. They provide more flexibility and trade influence than EEA membership, but still limited. Trademark protection depends on dual registration. Negotiations are tedious and may require free movement for EU nationals to guarantee access.
- **Canada-style FTA:** limited market access is possible, with probable exclusions for services and no DSM access. Tariffs and customs duties may be removed, but other product requirements may remain. Dual registration for trademarks is required. Legal certainty is not guaranteed and trade terms with other states are limited by EU requirements of regulatory convergence.

References for statistics: Intellectual Property Office (IPO) (2017) Fast Facts, HM Government; Office for National Statistics (2017) UK imports and exports of Intellectual Property services, excluding the Travel, Transport and Banking industries, HM Government.

POLICY RECOMMENDATIONS

- 1 Urge UK negotiators to reconsider their position on EU and EEA membership to guarantee unrestricted Single Market access, trade influence and legal certainty in IPRs.
- 2 Any Swiss-style Bilateral agreements should promote the UK's creative industry sectors by negotiating access to the DSM and provisions to offer IP services in the EU.
- 3 A Canada-style FTA should be considered as a last resort because losing Single Market access for IP services is likely to override any potential benefits.
- 4 In future international trade negotiations, the UK should include experts in IP law and policy and, where possible, attempt to mirror the protections afforded under the EU-Canada and EU-South Korea agreements.



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